

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

ORDER NO. 928

CASE NO. 00-04

**(Minor Text Amendment to the Zoning Commission and Board of Zoning
Adjustment Rules of Practice and Procedure Relating to Requests for Party Status
and the Board's Method of Serving Decisions and Orders – 11 DCMR)**

November 13, 2000

The Zoning Commission for the District of Columbia, pursuant to its authority under Sections 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 5-413 and 5-424), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of amendments to the Zoning Commission and Board of Zoning Adjustment Rules of Practice and Procedure in §§ 3022.3, 3022.4, 3106.2, 3106.3, 3125.4, and 3199.1 of the Zoning Regulations, Title 11 DCMR. The Commission took final action to adopt the amendments on November 13, 2000.

The Commission initiated this case to make minor modifications to the Commission and Board rules relating to party status, to expressly require persons requesting party status to include in their written requests an explanation of how their interests are "more significantly, distinctively, or uniquely affected" by the application or appeal than those of other persons in the general public, criteria that both the Commission and Board use in determining whether to grant party status. The Commission also sought to correct outdated, internal cross-references in the definition of "party" in § 3199.1 and to delete language in that section that is redundant to § 3106.3. Finally, the Commission sought to correct § 3125.4 to restore a 1997 amendment to the rule providing for service of the Board's decisions and orders by first-class mail, postage prepaid, that had been inadvertently changed to registered or certified mail, return-receipt requested, in the 1999 amendments to the rules.

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regular monthly meeting on September 11, 2000, to approve the proposed amendments. A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 22, 2000, at 47 DCR 7703, for a 30-day notice and comment period. The Office of the Corporation Counsel determined that the rulemaking meets its standards of legal

sufficiency. Because this rulemaking was undertaken pursuant the Commission's Consent Calendar procedures in 11 DCMR § 3030, no hearing was held.

The District of Columbia Building Industry Association submitted a letter supporting the proposed amendments as consistent with the spirit and intent of earlier Commission action to update and streamline its procedures and those of the Board.

The Commission also received a letter from Diane L. Olsson objecting to the proposed rulemaking. Ms. Olsson urged the Commission not to adopt the proposed rules, but rather to make substantive changes to the rules to clarify and improve matters relating to party status. The Commission agrees that the party status rules should undergo further review to determine whether any substantive improvements should be made. However, the Commission does not believe that it should defer action that would provide an immediate improvement in the public process.

Currently, both the Commission and the Board base their decisions to grant party status on the criteria that the person requesting party status "clearly demonstrate" that the person's "interests will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public." 11 DCMR §§ 3022.3(f)(6), 3106.3. The proposed rule, printed in this notice to show the material being deleted in strike-out lettering and the material being added shown in bolded and underlined lettering, does not substantively change the existing party status criteria.

While the Commission and Board rules require a person requesting party status to file a request 14 days before the public hearing and to explain in writing how the person is likely to be affected if the proposed zoning action is approved or denied, neither set of rules requires the person requesting party status to expressly address the party status criteria. As a result, the written requests do not provide the Commission or Board with the information needed to determine whether to grant party status. The lack of this critical information means that the Commission and Board must elicit further testimony and arguments relating to party status at the hearings. It has also resulted in confusion, as many persons requesting party status are not prepared to address the Commission's or Board's questions concerning how they meet the party status criteria. The Commission believes it will reduce confusion and save considerable time at the hearings if persons requesting party status address the party status criteria in writing, in advance of the hearings.

Ms. Olsson also expressed concern that the Notice of Proposed Rulemaking did not invite public comment. The notice contains a paragraph inviting written comments within 30-days of publication of the notice in the *D.C. Register*, indicates that comments were to be filed with the Office of Zoning, and provides the address where the comments were to be filed. This paragraph is placed at the end of the Notice of Proposed Rulemaking, as is

customary. *See* 47 DCR 7703, 7707 (2000). No other comments or reports on the proposed rulemaking were received.

The Zoning Commission reviewed the case at its regular monthly meeting on November 13, 2000. The Commission finds that the proposed amendments to the Zoning Regulations are minor modifications and technical corrections to previously approved final rulemakings, in the best interest of the District of Columbia, consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital. No changes to the proposed rulemaking have been made.

This final rulemaking is effective upon publication in the *D.C. Register*.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the following amendments to the Zoning Regulations, Title 11 DCMR:

Subsection 3022.3 is amended to read:

3022.3 Except for the applicant and the ANC, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, the following information:

- (a) The person's name and address;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) Whether the person will appear through legal counsel and, if so, the name and address of the legal counsel;
- (e) A list of witnesses who will testify on the person's behalf; and
- (f) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by ~~such~~ **the** person, or in which ~~such~~ **the** person has an interest, that will be affected by the action requested of the Commission;
 - (2) The legal interest ~~such~~ **the** person has in ~~such~~ **the** property, such as owner, tenant, trustee, or mortgagee;

- (3) The distance between such the person's property and the property that is the subject of the application before the Commission;
- (4) The environmental, economic, or social, or other impacts likely to affect such the person and/or such the person's property, if the action requested of the Commission is approved or denied; and
- (5) ~~Any other matters that would demonstrate how the person would be affected or aggrieved by action upon the application; and~~ An explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.
- (6) ~~In considering any request for party status pursuant to §§ (1) through (5) above, the Commission shall grant party status only if the person has clearly demonstrated that his or her interests will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.~~

Subsection 3022.4 is amended to read:

3022.4 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of § 3022.3 have been complied with and whether the specific information presented qualifies the person as a party. **The Commission shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.**

Subsection 3106.2 is amended to read:

- 3106.2 Except for the ~~applicant, appellant~~ **appellant, applicant**, or the ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board, not less than fourteen (14) days prior to the date set for the hearing, the following information:
- (a) The person's name and address;
 - (b) A request to appear and participate as a party;
 - (c) Whether the person will appear as a proponent or opponent of the ~~application or appeal~~ **appeal or application**;
 - (d) Whether the person will appear through legal counsel and, if so, the name and address of such ~~the~~ legal counsel; and
 - (e) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by ~~such the~~ person, or in which ~~such the~~ person has an interest, that will be affected by the action **zoning relief** requested of the Board;
 - (2) The legal interest ~~such the~~ person has in ~~such the~~ property, such as owner, tenant, trustee, or mortgagee;
 - (3) The distance between ~~such the~~ person's property and the property that is the subject of the ~~application or appeal~~ **appeal or application** before the Board;
 - (4) The environmental, economic, ~~or social,~~ **or other** impacts ~~that are~~ likely to affect ~~such the~~ person and/or ~~such the~~ person's property if the action **zoning relief** requested of the Board is approved or denied; and
 - (5) ~~Any other relevant matters that demonstrate how such person likely will be affected or aggrieved if the action requested of the Board is approved or denied. An~~ **explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.**

Subsection 3106.3 is amended to read:

3106.3 In considering any request for party status pursuant to §3106.2, the Board shall grant party status only if the person requesting party status has clearly demonstrated that ~~his or her~~ the person's interests ~~will~~ would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action relief than those of other persons in the general public.

Subsection 3125.4 is amended to read:

3125.4 Formal notice of an order shall be given to any party to the appeal or application, by serving the party with a copy of the decision or order of the Board and the accompanying findings of fact and conclusions of law, by ~~registered or certified mail, return receipt requested~~ first class mail, postage prepaid.

The definition of the word "Party" in Subsection 3199.1 is amended to read:

Party – the following, as indicated:

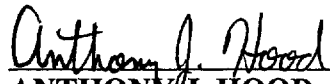
- (a) On appeals to the Board pursuant to §§ 3100.2 and 3200.2 ~~of this Title:~~
 - (1) The appellant;
 - (2) The person whose administrative decision is the subject of the appeal;
 - (3) The owner, lessee, operator, or contract purchaser of the property involved in the administrative decision, if ~~he or she~~ is not the appellant;
 - (4) The ANC for the area within which the property that is the subject of the appeal is located; and
 - (5) Any other person ~~who is~~ permitted by the Board to intervene, ~~in accordance with~~ pursuant to § 3112.15 of this Chapter; and
- (b) On applications to the Board pursuant to §§ 107.7, 2403, 2404, 3102 and 3103, and 3104 of this Title:

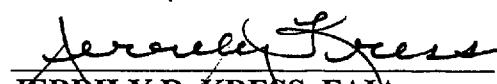
- (1) The applicant;
- (2) The ANC for the area within which the property that is the subject of the application is located; and
- (3) ~~Persons in support of or in opposition to the application who appear and participate at the public hearing held by the Board and who are determined by the Board to have a specific right or interest that will be uniquely affected by action on the application~~ Any other person granted party status by the Board pursuant to § 3106.3.

Vote of the Zoning Commission taken at its public meeting on September 11, 2000, to adopt the proposed rulemaking: 5 – 0 (Kwasi Holman, Herbert M. Franklin, Anthony J. Hood, and Carol J. Mitten, to approve; John G. Parsons, to approve by absentee vote).

This order was adopted by the Zoning Commission at its public meeting on November 13, 2000, by a vote of 5 to 0 (Carol J. Mitten, Herbert M. Franklin, Anthony J. Hood. John G. Parsons, and Kwasi Holman to **ADOPT** Z.C. Order No. 928

In accordance with the provisions of 11 DCMR § 3028.9, this order shall be come effective upon publication in the *D.C. Register*; that is, on November 24, 2000.


ANTHONY J. HOOD
CHAIRMAN
Zoning Commission


JERRILY R. KRESS, FAIA
DIRECTOR
Office of Zoning